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10-05873

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

IN RE:

George R. Wendell and Catherine T. Wendell

Debtors.

Wells Fargo Bank, N.A.

Movant,
vs.

George R. Wendell and Catherine T. Wendell,
Debtors; David M. Reaves, Trustee.

Respondents.

No. 2:10-bk-04962-RJH

Chapter 7

**MOVANT'S MOTION TO LIFT
THE AUTOMATIC BANKRUPTCY STAY**

RE: Real Property Located at
8346 North 72nd Place
Scottsdale, AZ 85258

Movant hereby requests an order granting relief from the automatic stay of 11 U.S.C. 362(a), to permit Movant to foreclose the lien of its Deed of Trust on real property owned by Debtors by trustee's sale, judicial foreclosure proceedings or the exercise of the power of sale, and to obtain possession and control of the real property.

1 This motion is supported by the attached Memorandum of Points and Authorities, which is
2 incorporated herein by this reference.

3 DATED this 10th day of March, 2010.

4 Respectfully submitted,

5 TIFFANY & BOSCO, P.A.

6
7
8 BY /s/ MSB # 010167

9 Mark S. Bosco

Leonard J. McDonald

10 Attorney for Movant

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 George R. Wendell and Catherine T. Wendell filed a voluntary petition for protection under Chapter
13 7 of the Bankruptcy Code. David M. Reaves was appointed trustee of the bankruptcy estate. Debtors have
14 an interest in that certain real property located in Maricopa County, AZ, more particularly described as:

15 **PARCEL NO. 1:**

16 A Leasehold as created by that certain lease dated January 13, 1985, executed by Herberger
17 Enterprises, Inc. an Arizona corporation, as Lessor and George R. Wendell and Catherine t.
18 Wendell, husband and wife as joint tenants with right of survivorship as lessees, as referenced in
19 the document entitled "Briarwood VI Lot 39 Lease dated January 13, 1985", which recorded June
20 24, 1985 in Instrument No. 85-289357, for the term, upon and subject to all the provisions
21 contained in said document, and in said lease and said lease in instrument recorded March 16, 1998
22 in Instrument No. 98-0201504.

23 EXCEPT all improvements located thereon.

24 **PARCEL No. 2:**

25 ALL IMPROVEMENTS located on Lot 39, BRIARWOOD VI, according to Book 227 of Maps,
26 Page 49 and Certificate of Correction recorded in Docket 16060, Page 903, records of Maricopa
County, Arizona.

Debtors executed a Note secured by a Deed of Trust, dated November 13, 2007, recorded in the
office of the Maricopa County Recorder's Office. True copies of the Note and Deed of Trust are annexed
as Exhibits "A" and "B", respectively, and made a part hereof by this reference.

1 Debtors are in default on the obligations to Movant for which the property is security, and
2 payments are due under the Promissory Note from and after January 1, 2010.

3 Movant is informed and believes and therefore alleges that the Movant and the bankruptcy estate
4 are not adequately protected based upon the Debtors failure to make payments on a timely basis.

5 Movant is informed and believes and therefore alleges that the Debtors and the bankruptcy estate
6 have no equity in the property. Pursuant to Debtors' Statement of Intentions the debtors intend on
7 surrendering the title and possession interest in the subject property. A true and correct copy of the
8 Debtors' Statement of Intention is attached hereto as Exhibit "C".

9 Further, Movant seeks relief for the purpose of foreclosing its Deed of Trust against the Debtor's
10 interest in the real property located at 8346 North 72nd Place Scottsdale, AZ. The Movant further seeks
11 relief in order to contact the Debtor by telephone or written correspondence regarding a potential
12 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
13 Mitigation Agreement, and may enter into such agreement with Debtors.
14

15 CONCLUSION

16 Movant requests that the court enter an order vacating the automatic stay of 11 U.S.C. Section
17 362(a) as to the debtors, the bankruptcy estate, the property, and Movant; to allow Movant to foreclose the
18 lien of its Deed of Trust or Mortgage; to evict Debtors and/or successors of Debtors; and to obtain
19 ownership, possession and control of the Property.

20 DATED this 10th day of March, 2010.

21 TIFFANY & BOSCO, P.A.

22
23 By /s/ MSB # 010167
24 Mark S. Bosco
25 Leonard J. McDonald
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